

stands, however, the action programme has some flaws which need to be addressed. Amongst other things it should:

- i) spell out the criteria to be used when making the 'careful selection of issues for treatment at Community level' (page 1, paragraph 3);
- ii) provide much more detail as to how the various proposals for TEN's are linked to the Common Transport Programme;
- iii) set out a planning timetable for the development

and implementation of the 'Citizens' Network' and provide clear guidance as to the priority which the 'Citizens' Network' project will receive compared to say the proposal for a Transport TEN;

- iv) strengthen substantially the sections of the 'Social Dimension', in particular, by setting out clear objectives for improving the quality of life in the transport sector and identifying ways and means of raising social productivity throughout the sector. Finally, and of considerable importance, the issue of working time deserves a great deal more than the single sentence in the Action Programme.

Done at Brussels, 22 November 1995.

The President
of the Economic and Social Committee
Carlos FERRER

Opinion on the draft Commission Directive amending 90/388/EEC with regard to mobile and personal communications

(96/C 39/10)

On 3 August 1995 the Commission decided, following Article 198 of the Treaty, to consult the Economic and Social Committee on the above-mentioned draft Commission Directive.

The Section for Transport and Communications was instructed to prepare the Committee's work on this subject; it set up a study group and appointed Mr Mobbs as Rapporteur.

At its 330th Plenary Session (meeting of 22 November 1995), the Economic and Social Committee appointed Mr Mobbs as Rapporteur-General and adopted the following Opinion by large majority with 1 abstention.

1. Introduction

1.1. Commission Directive 90/388 of 28 June 1990 removed restrictions on the provision of value-added telecommunications, data and private voice telephony. This Directive has been identified as the cornerstone of the EU framework for liberalizing the European telecommunications market.

1.2. Council Resolution 93/C213/01 of 22 July 1993 on further development of the telecommunications market set the basic framework for the evolution of the

regulatory environment in the EU. 1 January 1998 was established as the date for full liberalization (with additional transition periods for certain Member States). The Resolution also noted 'that there is a need for rapid and effective implementation of ... Directive 90/388'.

1.3. On 27 April 1994 the Commission issued a Green Paper Towards the Personal Communications Environment: Green Paper on a common approach in the field of mobile and personal telecommunications in the European Union (COM(94) 145).

1.4. The Committee was consulted and gave its Opinion in September 1994⁽¹⁾. The main points of that Opinion were:

1.4.1. The Committee welcomed the Green Paper (3.1).

1.4.2. Whilst supporting the Green Paper, the Committee recognized that considerable changes would be required in some Member States (3.3).

1.4.3. Mobile communications is a high growth area and should provide benefits to the European economy as a whole (3.6).

1.4.4. Separation of operational and regulatory functions must be achieved. Effective NRAs (National Regulatory Authority) must ensure compliance with all relevant laws and regulations (3.6.1).

1.4.5. Licensing procedures, terms and conditions must be transparent and non-discriminatory (4.2).

1.4.6. Any code of conduct for service providers should adapt to national traditions and practices (4.3).

1.4.7. It was critical that interconnection be facilitated (4.4). (Note: This is now the subject of a proposed Commission Directive COM(95) 379. The Committee is in the process of preparing an Opinion).

1.4.8. New operators must have the right to establish their own infrastructures (4.5).

1.4.9. More should have been made of the need for fair competition to avoid the risks and likelihood of cross-subsidies (4.9.1).

1.4.10. Doubts were expressed about the prospects for the success envisaged by the Commission regarding access to third markets (4.9.5.1).

1.4.11. The Council and the Commission should accord high priority to questions of job training and retraining (4.11.2).

2. The Commission proposal

2.1. The Commission proposal (SEC(95) 1382 final) follows on from its report (COM(95) 158) on the consultation process concerning mobile and personal communications (see Section 1.3).

2.1.1. In many areas the Commission found that there was considerable common ground although a number of problems remain to be resolved.

2.1.2. Substantial progress has already been made in many Member States as actions are taken to abolish monopolies in the provision of mobile services.

2.2. The Commission proposes amending Commission Directive 90/388, already amended by Commission Directive 94/46⁽²⁾ with regard to satellite communications, by including mobile and personal communications along similar lines.

2.3. The reasons for the Commission action are set out in the 19 recitals to the proposed Directive.

2.4. Whilst recognizing that many Member States have opened up their markets to mobile telephone service providers, the Commission considers that unacceptable restrictions still prevail and that immediate action by use of Article 90(3) of the Treaty is necessary to ensure this sector is fully liberalized by 1 January 1996. This date was proposed in the Communication on the Consultation on the Green Paper on mobile and personal communications (COM(94) 492 final).

2.5. The Commission proposal also goes with work in hand on:

- the implementation of full competition in telecommunications markets (proposed Commission Article 90 Directive C(95) 1843)⁽³⁾;

- interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provisions (ONP) (proposed Directive COM(95) 379)⁽³⁾.

2.6. The Commission finds unacceptable restrictions such as:

2.6.1. A ban on using infrastructures other than those provided by the incumbent telecommunication organization.

2.6.2. Licences for DCS 1800 have not been granted.

2.6.3. Exclusive rights for the provision of certain mobile services apply in favour of the national TO.

2.6.4. Restriction, without valid reason, on granting licences to use certain frequencies and this includes DECT.

⁽¹⁾ OJ No C 393, 31. 12. 1994, p. 64.

⁽²⁾ OJ No L 268, 19. 10. 1994, p. 15.

⁽³⁾ A Committee Opinion is being prepared.

2.6.5. Even where licences have been granted to competing mobile operators, some have been granted in a more advantageous manner than to others.

2.6.6. Exclusive rights are generally granted to those already enjoying a dominant position.

2.6.7. Mobile operators are required to interconnect with other mobile operators via the national TOs fixed network.

2.7. The Commission considers that such practices are a restriction to free and fair trade and must be abolished (with some permitted delays for certain Member States with less developed organizations).

2.8. The Commission proposal due in force on 1 January 1996 is intended to:

2.8.1. Allow mobile operators to establish their own infrastructures as well as those provided by third parties or by sharing.

2.8.2. Require the abolition of all exclusive and special rights in the area of mobile communications.

2.8.3. Establish licensing procedures to authorize the launch, where this has not been achieved, of digital services GSM, DCS 1800 and DECT.

2.8.4. Abolish restrictions on direct interconnection for mobile networks and grant the right to interconnect with the public telecommunications network.

2.8.5. Require the awarding of licences according to open, non-discriminatory, and transparent procedures and that limiting the number of licences to be issued shall only be on the basis of essential requirements such as the efficient use of frequencies, where justified under the principle of proportionality.

3. General comments

3.1. The Commission action is part of its overall strategy to achieve full liberalization of telecommunication services by 1 January 1998. To achieve this, a proper regulatory framework must be in place well in advance of that date.

3.2. Full liberalization of mobile and personal communication services is one of the major outstanding activities. Almost all Member States allow the operation of mobile telephones but not in a manner considered by the Commission to be adequately competitive.

3.3. The Commission proposal is welcomed. However, there must be some doubt about the implementation date of 1 January 1996 being achieved in all Member

States and therefore it may be necessary to allow additional transition periods as with those referred to in paragraph 1.2 of this Opinion.

3.4.1. Comment has already been expressed to the Commission by a number of Member States about the feasibility of complying with 1 January 1996. It has also been suggested that 1 January 1998 would be preferable, not least because that would bring competition in the mobile sector with the full liberalization of voice and infrastructure. It would enable, it is said, the necessary legislation to be put in place, and it would also enable frequency bands such as 900 MHz for GSM to be cleared of other services, such as TACs (Total Access Communication Systems).

3.4.2. Other concerns include the need to enable fixed link operators to so order their business to rebalance their tariffs in order to avoid unfair 'cream skimming' by new operators, that is, taking the profitable customers without other service obligations which fixed link operators must meet.

3.4.3. Some Member States believe that they need time either to implement a fully compliant regulatory regime, or time to negotiate with third countries clearance of frequency bands in order to avoid harmful interference for the types of services to be covered by this proposed Directive.

3.4.4. The Committee notes the terms of the proposed Article 4 (entry into force and derogations) and would express to the Commission its concern that competition in the market in telecommunications services be developed in an orderly manner and with regard to social consequences. However, the Committee is of the view that the 'benchmark' date of 1 January 1996 should be kept and that those Member States who do have difficulty in meeting that date should have the benefit of Article 4.

3.5.1. Since many similar Commission actions in the run up to full telecommunication liberalization are undertaken under an existing Article 90 Directive, it is inevitable that the current Commission proposal would follow in the same manner. The Commission's overall timeframe, set by the Council, does not leave the Commission with much of an alternative.

3.5.2. Recourse to Article 90 is provided for under the Commission prerogative to ensure a proper balance of liberalization and harmonization measures in the area of telecommunications regulation policy (political agreement of 1989).

3.5.3. Since the Commission does not have to consult when using Article 90, the Committee is often dissatisfied when Article 90 Directives are proposed. In this instance, the Committee is pleased to have been officially consulted.

3.6. The mobile sector is experiencing levels of growth (according to Commission information) averaging 60 %. Commission studies predict 38 million cellular mobile users in Europe by the year 2000 and 80 million by 2010. To this should be added the export prospects for a product where the EU is a market leader already.

3.7. New mobile operations, including manufacture and infrastructure creation, are significant job creators in Member States. This should help alleviate job losses caused by the unstoppable introduction of new technologies in the fixed networks. The Committee's comment in its previous report (see paragraph 1.4.11 above) regarding the granting of high priority to studying the economic impact on jobs remains outstanding — unfortunately.

3.8. Indications to date are that expansion of the mobile market is being, and will be, achieved without any substantial financial loss in the fixed networks due to increased usage of their networks and therefore additional revenues created.

4. Specific comments

4.1. The recitals set out a long litany of failure by some or all Member States to implement measures to open up their telecommunication markets and go some way to explaining why the Commission is taking action now.

4.2. The Committee is of the view that regulations should be 'technology-free' allowing the market place to decide which technology should be used to best optimize competitiveness and service to users. The Commission should not pick technology — for example DECT.

4.3. *Specific comments on Article 1 of the draft Directive*

4.3.1. Definitions (Article 1)

The amendment proposed to the definition of 'essential requirements' is satisfactory but should be expanded so that Member States may refuse to issue a mobile and/or personal communication licence to a dominant operator where this would be contrary to the interests of the

development and maintenance of competition under the competition rules of EU.

4.3.2. Licensing (Article 3a)

4.3.2.1. Article 3a(i) refers both to essential requirements and to trade regulations (as defined in Article 3). To ensure effective competition in the provision of infrastructures and services, these conditions should be expanded to include:

- accounting separation of the business of any operator, especially if that operator is the owner of network infrastructure, a fixed network operator, a retailer of airtime and the provider of directory and other services;
- access to mobile operators to the network of any operator on terms at least as favourable as those applicable to any mobile operator owned by it;
- likewise with regard to the sale of airtime to any service provider;
- prohibition of any unfair cross-subsidies or linked sales or any other matter likely to have an anti-competitive effect.

4.3.2.2. With regard to the last paragraph of Article 3a, it should be made clear that the reference to telecommunication organizations should include subsidiaries or related companies or associates of it or them.

4.3.2.3. It is not clear what the last sentence is trying to achieve and whether it is an obligation on all Member States. This should be clarified.

4.3.2.4. Licence fees should be set in a non-discriminatory manner and to the extent required to be paid by any new market entrant, should equally, at least, be paid by an existing operator, especially when associated with any dominant operator.

4.3.3. Access to frequencies (Article 3b)

The designation required to be reviewed should be done by the Member State.

4.3.4. Access to infrastructures (Article 3c)

Some operators may choose not to build their own infrastructure. To avoid any argument this should be made clear.

4.3.5. Interconnection (Article 3 d)

This Article is important and needs to be seen in the context of the Commission's on-going work on interconnection (see paragraph 2.5 above).

4.3.5.1. The second sentence of the first paragraph might be better expressed:

'Operators of mobile communication systems for the public shall have the right to interconnect to any telecommunications network within the Member State in which it is licensed'.

4.3.5.2. It would be preferable in the last sentence of the first paragraph to set a 'sufficient' number of points of interconnection rather than a minimum number. It is difficult to determine beforehand for all types of interconnection what would be the minimum. What is important is that a 'sufficient' number be provided so that the service can be introduced.

4.4. *Specific comments on Article 2 of the draft Directive*

For the reasons stated above (paragraph 4.1), the Commission seems to be determining here what would be better left to the market to determine. The Committee endorses Article 2 of the Directive, seeing it as a necessary consequence of the principle enshrined in Article 3a

iii whereby 'licensing conditions should not include unjustified technical restrictions'. New licences should in fact be granted, as a result of an open and transparent procedure, to all those applying for one without precluding the possibility that current GSM licences can be extended to DCS technologies with the aim of using the best technology available, partly in the interests of consumer.

4.5. *Specific comments on Article 4 of the draft Directive*

Comment has already been made (paragraph 3.4.1) about the 1 January 1996 date. However, it is noted that the second paragraph of the proposed Article 4 will allow those with less developed or very small networks further periods of time for infrastructure. This should deal with the concerns expressed in paragraphs 3.4.1 to 3.4.4 inclusive.

4.6. *Health, safety and the environment*

The Committee is pleased to see that (subsequent to the publication of this proposal) the Commission has launched a special investigation into the effects of radio frequency radiation on the health of mobile phone users. This aspect of the original Commission Green Paper (COM(95) 145 final) was a concern expressed by the Committee in its Opinion of September 1994 (CES 1007/94). The Committee is pleased to see that this matter is now receiving consideration.

Done at Brussels, 22 November 1995.

*The President
of the Economic and Social Committee*

Carlos FERRER
